

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2009-154132-001 DT

02/14/2012

HONORABLE CARI A. HARRISON

CLERK OF THE COURT
V. Morales
Deputy

STATE OF ARIZONA

LOUIS FRANK CAPUTO III

v.

GARY LYNN FOSHEE (001)

CHARLES K SHELL

APO-PLEAS-CCC
FINANCIAL SERVICES-CCC
VICTIM SERVICES DIV-CA-CCC

**TRIAL MINUTE ENTRY
DAY NINE**

Courtroom 1204 - Central Court Building

10:30 a.m. **LET THE RECORD REFLECT** that the jury is all present in the jury room and resume their deliberations from February 13, 2012.

State's Attorney:	Lou Caputo
Defendant's Attorney:	Chad Shell
Defendant:	Present
Court Reporter:	Terry Masciola

1:21 p.m. Trial to jury continues from February 13, 2012.

The eight members of the jury are all present in the jury box and by their foreperson return into Court their verdict, which is read and recorded by the clerk, and is as follows:

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths,

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do find the Defendant, Gary Lynn Foshee, on the charge of Manslaughter, to wit: Russell Jenkins, as follows: Guilty.

We further find the offense to be: Dangerous.

Signed Presiding Juror No.4

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Gary Lynn Foshee, on the charge of Endangerment (Imminent Death), to wit: Terry Cunningham, as follows: Guilty.

We further find the offense to be: Dangerous.

Signed Presiding Juror No.4

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Gary Lynn Foshee, on the charge of Endangerment (Imminent Death), to wit: Timothy Sherer as follows: Guilty.

We further find the offense to be: Dangerous.

Signed Presiding Juror No.4"

The jury replies that these are their true verdicts.

At the request of the Court, the jury is polled, and each juror replies that this is his or her verdict.

FILED: Verdicts

The jury is informed of aggravation phase.

1:26 p.m. The jury is excused from the courtroom and court stands at recess.

1:31 p.m. Court reconvenes with respective counsel and the Defendant present. The jury is not present.

Court Reporter, Terry Masciola, is present.

Aggravator jury instructions are finalized and verdicts are prepared.

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(1:36 p.m.) The jury is present in the courtroom.

The jury is instructed by the Court as to the law applicable to aggravating circumstances.

FILED: Aggravators Jury Instructions

(1:43 p.m.) A bench conference is held between Court and counsel, off the record.

State's case:

Nina Jenkins is recalled as a witness and testifies further.

State rests.

Defendant rests.

The State presents argument for a finding of aggravating circumstances.

The Defense presents argument for no finding of aggravating circumstances.

1:53 p.m. The jury returns to the jury room for further deliberations.

2:15 p.m. Court reconvenes with respective counsel and the Defendant present. The jury is present.

Court Reporter, Terry Masciola, is present.

The eight members of the jury are all present in the jury box and by their foreperson return into Court their verdict, which is read and recorded by the clerk, and is as follows:

“We, the jury, duly empanelled and sworn in the above-entitled cause, upon our oaths do find, on the charge of Manslaughter, to wit: Russell Jenkins, as to the alleged aggravating circumstances were proven beyond a reasonable doubt:

The offense(s) caused physical, emotional or financial harm to the victim or the victim's family;

The offense(s) involved the infliction or threatened infliction of serious physical injury;

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The offense(s) involved multiple victims in a single incident;

The defendant did not seek help for the victim.

Signed Presiding Juror No. 4

“We, the jury, duly empanelled and sworn in the above-entitled cause, upon our oaths do find, on the charge of Endangerment (Imminent Death), to wit: Terry Cunningham, as to the alleged aggravating circumstances were proven beyond a reasonable doubt:

The offense(s) caused physical, emotional or financial harm to the victim or the victim’s family;

The offense(s) involved the infliction or threatened infliction of serious physical injury;

The offense(s) involved multiple victims in a single incident;

The defendant did not seek help for the victim.

Signed Presiding Juror No. 4

“We, the jury, duly empanelled and sworn in the above-entitled cause, upon our oaths do find, on the charge of Endangerment (Imminent Death), to wit: Timothy Sherer, as to the alleged aggravating circumstances were proven beyond a reasonable doubt:

The offense(s) caused physical, emotional or financial harm to the victim or the victim’s family;

The offense(s) involved the infliction or threatened infliction of serious physical injury;

The offense(s) involved multiple victims in a single incident;

The defendant did not seek help for the victim.

Signed Presiding Juror No. 4”

The jury replies that these are their true verdicts.

FILED: Verdicts

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(2:19 p.m.) The jury is excused from further consideration of the cause. Court remains in session.

IT IS ORDERED setting **Status Conference re: Sentencing on March 13, 2012 at 8:45 a.m.** in this division.

IT IS FURTHER ORDERED setting time for **Entry of Judgment of Guilt and Sentencing on March 23, 2012 at 9:30 a.m.** in this division.

IT IS ORDERED the Adult Probation Department shall prepare a Presentence Report. The Presentence Report shall be available to the Court no later than March 13, 2012.

LET THE RECORD REFLECT that **Defense counsel does not want the Adult Probation Department to interview the Defendant in preparation of the Presentence Report.**

IT IS ORDERED exonerating any bond previously posted in this matter.

ISSUED: Order Exonerating Bond

IT IS ORDERED pursuant to Rule 7.2 Defendant shall not be released on bail or own recognizance. Upon motion of Defense counsel,

Only those exhibits not offered in evidence are released.

FILED: Trial Worksheet, Exhibit Worksheet

2:23 p.m. Court is adjourned.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010–117 and 2011–10 to determine their mandatory participation in eFiling through AZTurboCourt.